

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ENTROPIC COMMUNICATIONS, LLC,

Plaintiff

v.

CHARTER COMMUNICATIONS, INC.,

Defendant.

Civil Action No. 2:22-cv-00125-JRG

JURY TRIAL DEMANDED

**CHARTER'S OBJECTION TO ORDER (DKT. 353) GRANTING-IN-PART
AND DENYING-IN-PART PLAINTIFF'S MOTION TO STRIKE
THE OPINIONS OF CHRISTOPHER BAKEWELL (DKT. 174)**

Pursuant to Fed. R. Civ. P. 72, Defendant Charter Communications, Inc. respectfully objects to the November 28, 2023 Order (Dkt. 353) granting-in-part Entropic's motion to strike the opinions of Christopher Bakewell (Dkt. 174).

I. APPLICABLE LEGAL STANDARD

For non-dispositive motions, the Order is analyzed to determine if it is "clearly erroneous or contrary to law." L.R. CV-7(a)(2); L.R. CV-72(b). "The district judge applies a clearly erroneous standard to the magistrate judge's factual conclusions, a contrary to law standard to his legal conclusions, and abuse of discretion standard to the numerous instances in which magistrate judges exercise discretion in resolving nondispositive matters." *Personalized Media Commc'ns, LLC v. Zynga, Inc.*, No. 2:12-CV-0068-JRG-RSP, 2013 WL 12147661, at *1 (E.D. Tex. July 22, 2013) (cleaned up).

II. OBJECTIONS

A. Mr. Bakewell's Opinions Non-License Opinions Regarding Pathtrak Should Not Be Struck

Magistrate Judge Payne granted Entropic's motion to strike paragraphs 594-595, 596 (regarding the '008, '826, and '362 Patents), Exhibit 1.0 (regarding the same patents) from Mr. Bakewell's rebuttal report based on a license that was not disclosed during discovery. (Dkt. 353 at 8.) Charter objects to the Order to the extent it is overbroad by striking other facts regarding PathTrak in those paragraphs that were fully disclosed during discovery.

B. Mr. Bakewell's Opinions On Non-Infringing Alternatives Should Not Be Struck

In granting Entropic's motion to strike Mr. Bakewell's opinions concerning MaxLinear chips as a non-infringing alternative, Magistrate Judge Payne explained that "[t]he Court notes that it has recommended granting summary judgment that the MaxLinear Chips could not be non-infringing alternatives. Accordingly, these paragraphs are irrelevant and should be struck." (Dkt.

353 at 3.) As set forth in Charter's objections to the Report and Recommendation Granting-in-Part Entropic's Motion for Partial Summary Judgment That Devices with MaxLinear Chips are Not Non-Infringing Alternatives Affecting The Reasonable Royalty Rate, filed contemporaneously with this brief, the Report and Recommendation was based on clear error and/or contrary to law. Should the Court sustain Charter's objections for the reasons set forth in Charter's brief, Charter respectfully requests that this portion of Magistrate Judge Payne's order be reconsidered and denied.

III. CONCLUSION

Charter respectfully requests that the Court sustain Charter's objections to the Order.

Dated: December 7, 2023

Respectfully submitted,

/s/ Daniel Reisner by permission Elizabeth Long

Deron R. Dacus
State Bar No. 00790553
The Dacus Firm, P.C.
821 ESE Loop 323, Suite 430
Tyler, TX 75701
Phone: (903) 705-1117
Fax: (903) 581-2543
Email: ddacus@dacusfirm.com

Daniel L. Reisner
David Benyacar
Elizabeth Long
Albert J. Boardman
Melissa Brown
Arnold & Porter Kaye Scholer LLP
250 West 55th Street
New York, New York, 10019-9710
Telephone: (212) 836-8000
Email: daniel.reisner@arnoldporter.com
Email: david.benyacar@arnoldporter.com
Email: elizabeth.long@arnoldporter.com
Email: albert.boardman@arnoldporter.com
Email: melissa.brown@arnoldporter.com

Marc A. Cohn
Amy L. DeWitt
William Louden
William O. Young, Jr
Thomas Carr
Natalie Steiert
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
Telephone: (202) 942-5000
Email: marc.cohn@arnoldporter.com
Email: amy.dewitt@arnoldporter.com
Email: william.louden@arnoldporter.com
Email: william.young@arnoldporter.com
Email: thomas.carr@arnoldporter.com
Email: natalie.steiert@arnoldporter.com

Zachary A. Nemirovsky
Arnold & Porter Kaye Scholer LLP
3000 El Camino Real, 5 Palo Alto Square, #500

Palo Alto, California, 94304
Telephone: (650) 319-4500
Email: zachary.nemirovsky@arnoldporter.com

Attorneys for Defendant
Charter Communications, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document and all attachments thereto are being filed electronically in compliance with Local Rule CV-5(a). As such, this document is being served December 7, 2023, on all counsel of record, each of whom is deemed to have consented to electronic service. L.R. CV-5(a)(3)(A).

/s/ Elizabeth Long

Elizabeth Long